

REMARKS

Claims 1, 3-7, 9-13, 15-19, 21-40, 43, 46-47, 49-52, and 55-60 are pending, with claims 1, 7, 13, 19, 25 and 40 being independent. Claims 25, 26, 28-34, 37, 39, 40, 43, 46, 47, 49-52, and 55-60 were amended by virtue of the Preliminary Amendment filed January 8, 2004. Claims 2, 8, 14, 20, 27, 35, 36, 38, 41, 42, 44, 45, 48, 53 and 54 are cancelled.

Claims 1, 3-7, 9-13, 15-19, 25, 26, 28-34, 37, 39, 40, 43, 46, 47, 49-52, and 55-60 were previously rejected for obviousness-type double patenting in view of claims 1-15 of U.S. Patent No. 6,246,453. Applicant requests reconsideration and withdrawal of this rejection for the reasons noted below.

First, as pointed out in Applicant's responses of May 7, 2002 and August 7, 2003, claims 21-24 (although listed on the Office Action Summary Form(s) as being rejected) have not, in fact, ever been rejected under either 35 U.S.C. 102 or 103, or otherwise. Therefore, as pointed out in the previous responses, those claims should be allowed. Therefore, Applicant respectfully submits that the Examiner erred in neglecting the above-discussed facts, and, particularly, in issuing the Final Office Action of September 8, 2003. At worst, even assuming the validity of the remaining rejections listed above and assuming a rejection could be formulated for claims 21-24, a non-final Office Action should have been issued that included such a rejection of claims 21-24, so as to provide Applicant the opportunity to respond to the rejection.

More generally, Applicant notes that the pending rejections of claims 1, 3-7, 9-13, 15-19, 25, 26, 28-34, 37, 39, 40, 43, 46, 47, 49-52, and 55-60 are based on proposed modifications of claims 1-15 of U.S. Patent No. 6,246,453. Specifically, for example, the rejections propose to modify claims 1-15 of U.S. Patent No. 6,246,453 so as to add elements which are recited in at least independent claims 1, 7, 13, and 19, and at least some of which are also recited in amended independent claims 25 and 40.

For example, as Applicant has previously pointed out, independent claim 1 is directed to a method of driving a reflective type liquid crystal display that includes, among other elements, a reflective layer. The method includes producing a parallel electric field between first and second electrodes, and driving liquid crystal material by the parallel electric field such that the liquid

crystal material is oriented in a hybrid alignment nematic mode. Nothing in claims 1-15 of the '453 patent would have led one of ordinary skill in the art to drive a reflective type liquid crystal display in the manner recited. Indeed, the claims of the '453 patent do not even describe or suggest using a reflective layer or a liquid crystal material, let alone generating a parallel electric field such that liquid crystal material is oriented in a hybrid alignment nematic mode.

Independent claims 7, 13, 19, 25, and 40, like independent claim 1, are directed to methods of driving a reflective type liquid crystal display that includes, among other elements, a reflective layer, and/or producing a parallel electric field between the first and second electrodes, and/or driving liquid crystal material by the parallel electric field such that the liquid crystal material is oriented in a hybrid alignment nematic mode. Accordingly, the rejection of claims 1, 7, 13, 19, 25, and 40, as well as the claims depending from them, should be withdrawn for at least the reasons discussed above.

In response to these arguments, the Examiner has admitted that the various claim elements discussed above are not disclosed by claims 1-15 of the '453 patent, but has taken official notice that such claim elements are advantageous, and, from this, has concluded that it would have been obvious to modify claims 1-15 of the '453 patent to arrive at the claims of the present application.

Applicant respectfully submits that this line of reasoning is insufficient for a number of reasons. Applicant previously challenged the Examiner's taking of Official Notice in the responses filed May 7, 2002 and October 15, 2002. In response, the Examiner stated in the Office Action dated January 7, 2003, that Applicant has not specifically pointed out the noticed fact that is not considered to be common knowledge in the art.

In response to this, Applicant notes that, at a minimum, the noticed facts have not been established as having been known at the time of the invention, which is the relevant inquiry for establishing an obviousness-type double patenting rejection. Moreover, even taking the noticed statement of advantageous features at face value, the rejections do not include the remaining elements of a prima facie case of obviousness. For example, the rejection does not disclose a

reasonable expectation of success, at the time of the invention, of modifying claims 1-15 of the '453 patent in the manner noticed.

Moreover, the MPEP clearly states that Official Notice should be "of notorious character and serve only to 'fill in the gaps' (of a rejection) in an insubstantial manner" (MPEP 2144.03E), and "should be rare when an application is under final rejection" (MPEP 2144.03A). Accordingly, Applicant respectfully requests that, in the case that a Notice of Allowance is not immediately issued, the Examiner provide documentary evidence of the noticed facts in the next official communication that is issued. Applicant further requests that any rejection based on the provided documentary evidence include all the elements for establishing a prima facie showing of obviousness, and not a mere statement that a particular feature has some advantage. Most, if not all, new devices, elements, or techniques are thought to have at least some advantage over the prior art; however, by itself, such an advantage is not sufficient to establish that it would have been obvious under 35 U.S.C. 103(a) to include such a device, element, or technique in any or all instances of the prior art.

Based on the above, all pending claims are believed to be in condition for allowance, and such action is hereby requested in the Examiner's next official communication.

If necessary, please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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